

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES

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In Re:)
) Case No. 2:18-bk-10443-BR
)
ECLIPSE BERRY FARMS, LLC, and) Chapter 11
HARVEST MOON STRAWBERRY,)
) Los Angeles, California
Debtors.)
) Tuesday, August 21, 2018
-----X 2:00 P.M.

HEARING RE: OBJECTION TO
CLAIM 7 BY CLAIMANT GUSTAVO
VEGA MORALES IN THE AMOUNT OF
\$11,529.83

HEARING RE: OMNIGUS OBJECTION
FOR ORDER DISALLOWING LATE-
FILED CLAIMS

HEARING RE: OBJECTION FOR
ORDER DISALLOWING CLAIMS

HEARING RE: OBJECTION TO
CLAIM #16 BY CLAIMANT HAROLD
CRAWFORD CO., INC./ARGO
PARTNERS IN THE AMOUNT OF
\$76,896.93

HEARING RE: OBJECTION CLAIM 3
BY CLAIMANT PAULINA LOPEZ
LOPEZ, IN THE AMOUNT OF
\$7,701.50

HEARING RE: OBJECTION TO
CLAIM 4 BY CLAIMANT ARACELI
ZARAGOZA OSORIO IN THE AMOUNT
OF \$7,817.01

25 Proceedings produced by electronic sound recording;
transcript produced by transcription service.

1 HEARING RE: OBJECTION TO
2 CLAIM 5 BY CLAIMANT CESAR
3 ZARAGOZA OSORIO IN THE AMOUNT
4 OF \$6,782.47

5 HEARING RE: OBJECTION TO
6 CLAIM 6 BY CLAIMANT ROSAELIA
7 LOPEZ LOPEZ IN THE AMOUNT OF
8 \$24,172.52

9
10 TRANSCRIPT OF PROCEEDINGS
11 BEFORE THE HONORABLE BARRY RUSSELL
12 UNITED STATES BANKRUPTCY JUDGE
13
14

15 APPEARANCES:

16 For the Debtor: BARRY A. CHATZ, ESQ.
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22 For Harold Crawford: DAVID B. SHEMANO, ESQ.
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27 For the Wage Claimants: J. RAUL ALCANTAR, ESQ.
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33 For the Official
34 Committee of Unsecured
35 Debtors: JOHN-PATRICK M. FRITZ, ESQ.
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1 Court Recorder: Wanda Toliver
2 U.S. Bankruptcy Court
3 Central District of California
4 Edward R. Roybal Federal Building
and Courthouse
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1 LOS ANGELES, CALIFORNIA, TUESDAY, AUGUST 21, 2018

2 2:43 P.M.

3 --oo--

4 THE CLERK: #34.00 through #44.00, Eclipse Berry
5 Farms.

6 MR. CHATZ: Good afternoon, Your Honor. Barry
7 Chatz for the debtors.

8 MR. ALVANTAR: Good afternoon, Your Honor. Raul
9 Alcantar for the wage claimants.

10 THE COURT: Okay.

11 MR. FRITZ: Good afternoon, Your Honor. JP
12 Fritz, Levene, Neale, Bender, Yoo & Brill for the Official
13 Committee of Unsecured Creditors.

14 THE COURT: Okay.

15 MR. SHEMANO: Good afternoon, Your Honor. David
16 Shemano of Shemano Law on behalf of Harold Crawford
17 Company, which is matter #39.00.

18 THE COURT: All right. Okay.

19 MR. CHATZ: Your Honor, we could do this by
20 number or --

21 THE COURT: It doesn't really matter. You know,
22 it's almost happenstance. In fact, it is.

23 MR. CHATZ: Yeah, it kind of is, so --

24 THE COURT: Usually how they get set on the
25 calendar is no bearing on anything other than they all

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1 relate to -- I know, so we can just do them --

2 MR. CHATZ: Why don't I do things that are easily
3 resolved and then we'll --

4 THE COURT: Well, a lot of these, by the way --
5 in fact, all of the claims except for the amount of the
6 wage folks are the identical objection.

7 MR. CHATZ: Yes, correct.

8 THE COURT: So --

9 MR. CHATZ: Why don't we start with --

10 THE COURT: So we can take them all --

11 MR. CHATZ: Why don't we start with number --

12 THE COURT: -- at least with --

13 MR. ALVANTAR: Your Honor, (indiscernible)
14 incorrect, Your Honor. I apologize. I represent the wage
15 claimants. There was one objection made to one of the
16 claims on the basis of it being late filed, so that is --

17 THE COURT: Oh, right, right, right.

18 MR. CHATZ: Correct. So there's -- these are --

19 THE COURT: Which one? I don't remember. You're
20 right.

21 MR. CHATZ: Yes.

22 THE COURT: Which -- I don't remember which --

23 MR. CHATZ: These are #34.00, #35.00, the late
24 claim filed by Gregorio Martinez.

25 MR. ALVANTAR: Correct.

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1 THE COURT: And #40.00 through #44.00 are all the
2 wage issues.

3 THE COURT: Well, there was a stipulation filed
4 in #35.00.

5 MR. CHATZ: Yes, that related to BNSF. There
6 were -- and under #35.00 there were 11 parties, actually
7 12. And with respect to the employee claims that's one of
8 the parties of the 12 in the late filed --

9 THE COURT: Okay.

10 MR. CHATZ: -- omnibus objections.

11 THE COURT: Okay. So what about the late filed
12 one? Which number is -- where --

13 MR. CHATZ: Well, as we've talked about it, I
14 know the papers kind of reflect it, we are fine to pay the
15 wages, the issue --

16 THE COURT: For the late filed one?

17 MR. CHATZ: Even for the late filed one.

18 THE COURT: Well, that's what I thought. I
19 thought maybe I missed something and it's the other -- it's
20 the other --

21 MR. CHATZ: It's the penalties --

22 THE COURT: Penalties and interest and all.

23 MR. CHATZ: That's the issue.

24 THE COURT: Okay. So far -- so far as the late
25 filed one you had agreed to the extent it's allowable?

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1 MR. CHATZ: To the extent that we know what about
2 is, which we do with respect to Mr. Martinez. That's fine.

3 THE COURT: Okay. Okay. That's fine, then.
4 Okay. So I don't have to separately deal with the --

5 MR. ALVANTAR: I --

6 THE COURT: That's what I thought you had said.

7 MR. ALVANTAR: Based on the debtor's
8 representation --

9 THE COURT: Okay.

10 MR. ALVANTAR: -- I don't believe so, Your Honor.

11 THE COURT: All right. Okay. So now we're back
12 to the -- one thing that was surprising and, in fact, the
13 debtor totally ignored it and I saw there was no basis for
14 it, but one of the things on the objections were that the
15 word "paid enough," it was a violation of law but with no
16 basis whatsoever for that. It was just an argument. The
17 debtor totally didn't even respond to it. Do you know what
18 I'm talking about?

19 MR. CHATZ: Yes, but --

20 THE COURT: And there was nothing --

21 MR. CHATZ: There was never a historical issue
22 regarding --

23 THE COURT: No, there was no facts or anything.
24 It was just an argument. Right? I was surprised you
25 didn't at least say something about it. I looked at it.

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1 There's no evidence of that, is there? It's like you just
2 threw that in.

3 MR. ALVANTAR: Excuse me, Your Honor. That the
4 debtor did not pay enough? zx

5 THE COURT: No, no, no. No, that they were not
6 paid a minimum wage. It was just kind of thrown in.

7 MR. ALVANTAR: Yes, Your Honor. That's a
8 function of the inability to negotiate a check. So under
9 state law in the *DeSchieke* (phonetic) case we cited in our
10 opposition makes clear that --

11 THE COURT: No, no, no. Different argument.
12 Talking about totally different was not to pay the minimum
13 wage. A total paragraph and I -- just there. You know
14 what I'm talking about?

15 MR. ALVANTAR: Yes, for liquidated damages, Your
16 Honor.

17 THE COURT: No, no. Not --

18 MR. CHATZ: This is what we're concerned about.
19 We tendered payment of what was --

20 THE COURT: No, you understand it was a paragraph
21 I'm talking about.

22 MR. CHATZ: I understand.

23 THE COURT: And the opposition had to do with,
24 and by the way, they're not paying the minimum wage. It's
25 nothing to do with what either of you just said.

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1 MR. CHATZ: Well, we believe we paid the
2 appropriate wages --

3 THE COURT: No, but you didn't even -- what I'm
4 saying is, I read it and I'm looking for some meat to it of
5 why you even made the argument. I could find nothing in
6 any of the evidence and you didn't even respond to it. I
7 just want to make sure that I didn't miss something as far
8 as paying minimum wage.

9 MR. CHATZ: The fact is, you're right. We didn't
10 respond because we tendered payment pursuant to our
11 understanding, so if we'd like to --

12 THE COURT: And you didn't present any evidence
13 that it was not paying minimum wage.

14 MR. ALVANTAR: Your Honor, if I may, so if I -- I
15 didn't receive a check that complies with the minimum wage,
16 but I am not able to negotiate that check. I have not been
17 paid minimum wage. That was the argument that --

18 THE COURT: Oh, well, you lost me on that. Now I
19 hear that you already made all the arguments that you
20 weren't paid timely and so forth. In any case, I just
21 wanted to raise that that I'm not dealing with.

22 Okay. You can have a seat.

23 MR. CHATZ: Right. So I guess the argument --

24 THE COURT: The argument --

25 MR. CHATZ: -- is because -- the argument is

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1 because they didn't -- they didn't negotiate the check. We
2 didn't properly pay them.

3 THE COURT: So all the -- all the -- why don't --
4 yeah, I can tell you, I've read all the papers and you can
5 if you wish to briefly argue it, but I totally agree the
6 other side -- you can pay -- I've read the -- I'm not an
7 expert in it, but I read all those statutes and those
8 statutes are all talking about not being paid, you know.
9 And then yes, you should incur the wrath of all kinds of
10 things if you don't pay somebody, but they were paid. And
11 so the idea that for whatever reason, I can understand the
12 type of work they do and so forth, they didn't want to cash
13 a check, but that doesn't mean they weren't paid. Pay is
14 when you hand the check, so I totally disagree with your
15 whole argument about the interest and all the penalties.
16 That is not what the state law is all about. They were
17 paid. And I know -- I've read your papers so I know what
18 you're going to say that nobody -- but, yeah, and so forth.
19 I just don't buy that for a second. They were paid.

20 MR. ALVANTAR: If I may attempt to --

21 THE COURT: Okay.

22 MR. ALVANTAR: I respectfully --

23 THE COURT: Because again I've read your papers.
24 I don't want you to re-read all what you've done. I've
25 spent a lot of time, you know, figuring out the correct

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1 answer.

2 MR. ALVANTAR: Absolutely not, Your Honor. I
3 will not waste your time.

4 THE COURT: So they were paid, were they not?

5 MR. ALVANTAR: They were issued a check which at
6 the time had sufficient funds according to the debtors.

7 THE COURT: Okay. So to my -- so they were
8 paid --

9 MR. ALVANTAR: Well, according to --

10 THE COURT: -- with -- collected on the check.

11 MR. ALVANTAR: According to Ms. DeSchieke, which
12 we cited in our opposition, a California Court of Appeals
13 case which was issued three weeks ago, it is not
14 dispositive whether the debtor issues a check with
15 sufficient funds at the time the debtor -- or the employer
16 pays the employee. If the employer subsequently learns
17 that the checks has become non-negotiable there is a duty
18 to cure that issue promptly. And here it is uncontested
19 that the last day the debtor operated was December 8th.

20 So the employees received notice that the debtor
21 was going out of business. A few of them went to cash
22 their checks next week. This is mid-December, all
23 prepetition. And Wells Fargo said you cannot negotiate
24 their check.

25 They promptly went to the debtor prepetition and

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1 they were told that -- not that the debtor was going to
2 file for bankruptcy, to basically be patient that the
3 checks would be reissued. So at that point Harvest Moon
4 was on notice that the checks were non-negotiable. And
5 even though initially, maybe months prior the checks had
6 been issued with sufficient funds, at that point Harvest
7 Moon had a duty to cure the non-negotiability of the
8 case -- of the checks. And that's clear under Ms.
9 DeSchieke.

10 And I understand that before the time the checks
11 were issued they had sufficient funds, but as of mid-
12 December 20 -- 017. Excuse me, Your Honor. Harvest Moon
13 knew that the checks were non-negotiable and did nothing
14 about it.

15 THE COURT: Okay. Well, let me hear from -- what
16 you have to say in response to that?

17 MR. CHATZ: Your Honor, these checks were months
18 old. That these folks are that local, they leave town.
19 They chose not to negotiate the checks. We filed a
20 motion --

21 THE COURT: You said there was one that was a
22 week --

23 MR. CHATZ: Well, we filed a motion post-petition
24 on an expedited basis to assure that they were paid.
25 Proofs of claim have been filed where they're asking for

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1 these damages. All we want to do is to pay them, but we
2 can't pay them until we know what we're supposed to pay
3 them.

4 THE COURT: What about that case you -- they
5 cited?

6 MR. CHATZ: Your Honor, I don't even think it's
7 on point. This is not the circumstance of that case. This
8 is a bankruptcy case with a federal court involved.

9 THE COURT: How is it different?

10 MR. CHATZ: Your Honor --

11 MR. ALVANTAR: The state law is the background
12 law that applies --

13 THE COURT: Well, wait. One at a time. It's not
14 a debate here.

15 MR. CHATZ: It's not a debate. This is -- they
16 were paid. That is the -- that is the difference with the
17 *DeSchieke* case. Those other folks weren't paid. This was
18 post-petition, I believe, under the *DeSchieke* case and the
19 debtors refused to pay.

20 We always did pay. And so because a bank closes
21 our account and creates difficulties, we paid dozens of
22 employees. As the court's record reflects, we had
23 \$180,000 --

24 THE COURT: Well, give me the facts again of that
25 case.

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1 MR. CHATZ: Sorry?

2 THE COURT: The case -- of the case.

3 MR. CHATZ: Do you want to go ahead?

4 THE COURT: Yes.

5 MR. CHATZ: You can argue it.

6 MR. ALVANTAR: Yes, Your Honor. In *DeSchieke* it
7 was actually not a bankruptcy case. It's --

8 THE COURT: Well, I know that.

9 MR. ALVANTAR: Right, right. It's a paralegal
10 basically gave notice on a Friday, "I'm quitting; I hate
11 this law firm."

12 THE COURT: Okay.

13 MR. ALVANTAR: And the partners issued a check
14 for her, accrued paid time off timely within the statute.
15 She went to cash it a few days later and due to an innocent
16 clerical error she was unable to negotiate it. She went
17 back to the law firm and sought a re-issued check informing
18 them that she could not negotiate it.

19 THE COURT: Right.

20 MR. ALVANTAR: And she sought penalties for
21 failure to be paid, I don't know, a few dollars.

22 THE COURT: Right.

23 MR. ALVANTAR: And the Court of Appeals agreed
24 with the paralegal that she was entitled to penalties not
25 because there was any culpability on the employer. The

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1 employer had paid -- timely paid the employee. However,
2 once the employer learned of the non-negotiability of the
3 checks, the employer had a duty to promptly cure that
4 issue.

5 And here, Your Honor, it is a bankruptcy case so
6 it's a little bit different but Your Honor issued a weights
7 (phonetic) order in March of 2018 authorizing the debtors
8 to pay all -- not some, not subject to any conditions, all
9 undisputed wages --

10 THE COURT: Right.

11 MR. ALVANTAR: -- effective immediately. And the
12 only reason they haven't done so is to leverage to
13 basically hold a few dollars that are owed to these
14 employees so they withdraw their penalties and damages
15 claims.

16 THE COURT: Okay.

17 MR. ALVANTAR: They could have easily satisfied
18 the undisputed portion and then objected to the remainder,
19 but they've chosen to, as Mr. Morris said on the phone to
20 co-counsel here, "If you don't withdraw everything with
21 prejudice we're not going to pay your undisputed wages."

22 THE COURT: Okay. Well, I -- okay, thank you.
23 Yeah, no, I agree. This is not -- this -- I understand the
24 facts of that case and it's light years different than in
25 the bankruptcy context. And so I am going to allow the

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1 claim to just the claims. I'm not going to allow under the
2 penalties. As I said before, this case doesn't at all
3 change my opinion. I don't disagree at all. Not that it
4 would matter if I disagree or not, the Court of Appeals,
5 the state court, but those are not the facts here. So I
6 will -- so that takes care of all of those.

7 MR. CHATZ: That's correct, Your Honor. We will
8 upload an order as soon as possible.

9 THE COURT: Now, and I assume you will -- again,
10 it doesn't affect their rights to appeal or whatever, but
11 at least you will, I assume now you have my approval, will
12 issue the checks?

13 MR. CHATZ: Yes.

14 THE COURT: Okay. All right. And then --

15 MR. CHATZ: We will upload an order --

16 THE COURT: You'll do whatever you're going to
17 do, but at least at a minimum they should get their money
18 as soon as possible.

19 MR. CHATZ: And if counsel will be willing to
20 receive those checks --

21 THE COURT: I think I can --

22 MR. CHATZ: -- that we can assure that there's
23 tender --

24 THE COURT: I think the best way -- I think
25 everybody would agree, would they not, is that -- I forget

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1 how many folks there are, but it's better for you to get
2 the money and then it would be a lot quicker for you to get
3 it to them. Who knows where these people even are.

4 MR. ALVANTAR: Right. It would be my co-
5 counsel's (indiscernible) --

6 MR. CHATZ: All right. What we'll do, if I could
7 impose on you -- sorry, Your Honor.

8 THE COURT: Yeah.

9 MR. CHATZ: If you could communicate with
10 Mr. Morris we'll upload an order either today or tomorrow.
11 As soon as that's all taken care of --

12 THE COURT: Right. That would be the most
13 efficient and fair way.

14 MR. CHATZ: -- we'll issue checks.

15 THE COURT: Right. That'd be the most efficient
16 and fair way, so --

17 MR. ALVANTAR: Yes, that's agreeable.

18 MR. CHATZ: Thank you very much.

19 THE COURT: Thank you very much. Okay.

20 MR. CHATZ: All right. If we want to go onto the
21 other contested issues so counsel doesn't have to spend
22 more time here we could go to --

23 THE COURT: Well, I assume so.

24 MR. CHATZ: -- #39.00.

25 THE COURT: I mean, you're always welcome --

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1 MR. CHATZ: Yeah. You're welcome to stay.

2 THE COURT: -- but I think you probably have
3 better things to do.

4 MR. ALVANTAR: Well, thank you, Your Honor.

5 THE COURT: Yes.

6 MR. CHATZ: Appreciate it.

7 THE COURT: Yes.

8 MR. CHATZ: We have #39.00.

9 THE COURT: All right.

10 MR. CHATZ: Which is the Harold Crawford fully
11 briefed objection.

12 THE COURT: Right. And as Your Honor and I have
13 discussed before, PACA is very specific. It needs to be
14 followed strictly. We hired special counsel in this case
15 because of its unique nature and this case specifically I
16 don't think there's a dispute. There's no executed
17 confirmation of any relationship --

18 THE COURT: I understand.

19 MR. CHATZ: -- so I don't know -- we'd ask that
20 our objection be sustained.

21 THE COURT: All right.

22 MR. SHEMANO: Your Honor?

23 THE COURT: Yes.

24 MR. SHEMANO: I'd like to respond to an argument
25 in the reply papers that we didn't --

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1 THE COURT: All right.

2 MR. SHEMANO: -- get the opportunity to respond
3 to. I think there is -- and I will assume some
4 responsibility for not identifying this confusion in our
5 initial objection, but there's a fundamental confusion here
6 about two separate parts of the regulation. And whether
7 intentionally or unintentionally they're conflating two
8 separate parts of the regulation. Now, I'd just like to
9 explain it and I think it will hopefully help you
10 adjudicate this dispute.

11 The regulation talks about the duty of the broker
12 to prepare this confirmation memorandum after the parties
13 reach their deal and that the confirmation memorandum is
14 supposed to state who the broker was the broker for.

15 THE COURT: All right.

16 MR. SHEMANO: And then the regulation says if the
17 confirmation or memorandum of sale does not contain such
18 information the broker shall be presumed to engage by the
19 buyer. And they're the seller; the other party is the
20 buyer and that's where they say, well, you didn't do that
21 so you're not the broker for us. Therefore, you lose.

22 And, Your Honor, I will concede that for purposes
23 of this hearing and for purposes of this statute that
24 Harold Crawford did not send a confirmation memorandum
25 stating that they are the broker for the debtor and,

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1 therefore, the debtor is liable for the brokerage fee. I
2 will concede that.

3 THE COURT: The debtor is not liable for --

4 MR. SHEMANO: Not liable as the broker because
5 the statute says --

6 THE COURT: I understand.

7 MR. SHEMANO: -- the confirmation or memorandum
8 of sale does not contain such information. Right? The
9 broker shall be presumed to be engaged (phonetic) by the
10 buyer.

11 THE COURT: Right.

12 MR. SHEMANO: And then it says -- this is the key
13 provision that they did not highlight to you and I
14 apologize, we did not highlight to you. It says:

15 "Unless otherwise agreed and confirmed, the
16 broker will be entitled to payment of brokerage fees
17 from the party by whom it was engaged to act as
18 broker."

19 So their saying is, okay, you didn't comply
20 with -- you didn't set a confirmation of memorandum rights,
21 so that means you're presumed to be the broker for the
22 buyer and therefore presumptively the buyer has to pay you,
23 not us. I get that. But this regulation says, "unless
24 otherwise agreed and confirmed."

25 So what the regulation says is, there's no

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1 statutory PACA requirement that the broker only be paid by
2 the buyer or by the party who engaged --

3 THE COURT: But you have to put it --

4 MR. SHEMANO: -- the broker.

5 THE COURT: But you've got to put it in writing
6 and who will be paid --

7 MR. SHEMANO: No, no, no, no. It only says you
8 have to put -- if you want to say that you are the -- if
9 you want to overcome the presumption -- there's a
10 presumption that the buyer pays the brokerage fee.

11 THE COURT: Right.

12 MR. SHEMANO: Then there's a presumption that if
13 you don't do a confirmation memorandum, the buyer -- you
14 work for the buyer. So --

15 THE COURT: I understand.

16 MR. SHEMANO: There's a presumption. But then it
17 says there's no requirement under PACA that the buyer pay
18 the broker fee or even that the party who engaged the
19 broker paid the broker fee. It's only a presumption unless
20 otherwise agreed by the parties. That's what the
21 regulation says.

22 THE COURT: All right.

23 MR. SHEMANO: So what we have here, Your Honor --
24 and it's undisputed, all right. It's not a factual
25 dispute. There's a factual dis -- there's a fact -- a fact

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1 that Harold Crawford is engaged by the buyer. Says, look,
2 we have something, we want to sell it -- want to buy it.
3 Go in the market, find somebody to sell it to us. That's
4 all done by Harold Crawford. They do the service. And
5 there's an understanding, which we describe as a course of
6 dealing between the parties traditional in the industry
7 that the parties know who's going to pay the fee. It's all
8 done -- both documented as part of the transaction
9 electronically. And at the conclusion of that they get an
10 invoice saying, we're the broker. Part of the deal is you
11 pay the per carton fee. And that's the way it was done,
12 Your Honor, for over ten years without dispute.

13 This \$79,000 claim is just an add-on to over a
14 million dollars of work in which Harold Crawford engaged as
15 the broker in deals in which they're the seller. So
16 they're making a hype -- they're not saying, we didn't --
17 my client did not provide the brokerage service. They're
18 not --

19 THE COURT: I understand that.

20 MR. SHEMANO: Right.

21 THE COURT: I've read all the papers. I reviewed
22 them --

23 MR. SHEMANO: Right, right. But neither party
24 highlighted that part of the regulation that said even if
25 you do not comply with the confirmation matter (phonetic),

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1 so that means you are presumed to be the broker for the
2 buyer and the buyer is presumed to be the party who's going
3 to pay you. The parties can agree otherwise. And because
4 of that --

5 THE COURT: You're saying by a course of conduct
6 they agreed. Is that your argument?

7 MR. SHEMANO: Absolutely. By whom --

8 THE COURT: No, I understand.

9 MR. SHEMANO: Well, absolutely. There is no --
10 we agreed. There is no writing over 15 years -- over 12
11 years of conduct that said in advance, you're going to pay
12 it. It's all done through the after-the-fact invoice.
13 They've always paid it. We've always relied upon it.

14 THE COURT: I understand.

15 MR. SHEMANO: And if -- and -- so I'd point out,
16 this (indiscernible) on the industry and if we rule -- if
17 you rule that that's not good enough, I mean, really,
18 really -- because then upset kind of a market course. This
19 is how people do it. I just -- we have to get --
20 clients -- time to get compensated from somebody and
21 they -- their course of conduct said they agreed we're
22 going to benefit from your service; they should pay it.

23 THE COURT: All right. Thank you. Well, you --
24 that's what I understood your argument all along.

25 MR. SHEMANO: Yeah.

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1 THE COURT: What about that?

2 MR. CHATZ: We responded in our pleadings and the
3 pleadings said you didn't evidence this, there's no --

4 THE COURT: But in all fairness --

5 MR. CHATZ: There's no con --

6 THE COURT: There's claim --

7 MR. CHATZ: There's no confirmation.

8 THE COURT: Wouldn't it be -- I mean, I
9 understand that --

10 MR. CHATZ: This is post-CRO work. They know
11 what the rules are.

12 THE COURT: Yeah, but CRO went down a long time
13 ago. When did that one come into effect?

14 MR. CHATZ: In 2017.

15 THE COURT: What, the new statute?

16 MR. CHATZ: No, the package statutes were --

17 THE COURT: Oh, no, no, no. See --

18 MR. CHATZ: Package statutes were well before we
19 were born.

20 THE COURT: The statute was amended, what, 20 or
21 whatever --

22 MR. CHATZ: Yeah, exactly.

23 THE COURT: So you're talking about --

24 MR. CHATZ: I --

25 THE COURT: -- the CRO came in because of the --

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1 well, there was a death of -- to parties and I --

2 MR. CHATZ: Right.

3 THE COURT: The history of it.

4 MR. CHATZ: I don't think course of conduct is
5 relevant --

6 THE COURT: Well --

7 MR. CHATZ: -- to the statute. The statute is
8 rather specific.

9 THE COURT: But you did read --

10 MR. CHATZ: The cal --

11 THE COURT: Counsel just read the statute.

12 MR. CHATZ: Yeah, and the statute says --

13 THE COURT: Unless otherwise --

14 MR. CHATZ: -- unless otherwise agreed.

15 THE COURT: -- agreed. And he's arguing that
16 the -- otherwise agreed by years of agreement that this is
17 how it's going to work. I mean, that's basically the
18 argument.

19 MR. CHATZ: But I don't think that you override
20 the particular terms as Your Honor looked at it when we
21 filed our response. He's re-arguing what he argued in his
22 response. And the statute is rather clear; there do need
23 to have a confirmation of sale. In order to collect --

24 THE COURT: And unless -- again, unless --

25 MR. CHATZ: In order to coll --

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1 THE COURT: Let me stop you. Unless as
2 otherwise --

3 MR. CHATZ: They --

4 THE COURT: -- agreed by the parties.

5 MR. CHATZ: They filed a proof of claim under
6 PACA. They did it -- if they had a different proof of
7 claim they wished to file they could have done it.

8 THE COURT: Well, the claim is for fees. I'm not
9 sure. Does it matter if it's under PACA?

10 MR. CHATZ: I -- PACA -- PACA is the specific
11 statute.

12 THE COURT: The way I read it the claim -- and
13 everybody knows, you know, what the claim is for.

14 MR. CHATZ: Excuse me. My --

15 THE COURT: Whether it's technically in the PACA
16 or whatever, sure. I had some familiarity. Not nearly as
17 much as you gentlemen, but over the years I have some
18 familiarity how PACA works.

19 But don't you think that again from his
20 standpoint the -- it's obvious. I'm not faulting anybody.
21 I agree with the complaint -- the claim. Just so I
22 understand the way it worked, here is this stepping back as
23 I get to do as the judge of what's really going on here and
24 say, well, something new. People coming in. I guess after
25 the original people that set up the business died. To say

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1 the least, unfortunate. They now suddenly realize it was
2 improper.

3 But the fact of the matter is that the -- that if
4 you really wanted to change things wouldn't it be a good
5 thing to change things before he went out and did the work?

6 MR. CHATZ: Your Honor, they always had a right
7 to get paid by the seller. If you could give me one
8 second, my client, the CRO, is here. He's a PACA expert
9 here. We don't have our PACA lawyer here. If you wish to
10 file the surreply, I wish he would have. Could you give me
11 one second?

12 THE COURT: Well, no, let me stop you. This is
13 not -- this is a hearing on -- this is a motion --
14 objection on the facts of --

15 MR. CHATZ: Right. This is the facts. The facts
16 are --

17 THE COURT: Yeah.

18 MR. CHATZ: -- in our view the statute is a bar
19 to their claim.

20 THE COURT: Okay. Well, I disagree. Again, and
21 so this is not -- you know, I am not faulting anybody. To
22 say the least how this developed with the death of the
23 people starting this wonderful business and so forth. But
24 it appeared to be that, yes, I -- I agree with the claimant
25 that -- that is an agreement, that is, a course of conduct

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1 over years. You can have a seat. There's not --

2 MR. CHATZ: Oh, no, that's fine.

3 THE COURT: -- a debate. But it does seem to me
4 my -- I'm the only, again, neutral person here on this. It
5 seems to me -- I understand the arguments and that -- but
6 the fact of the matter is this is how things were done and
7 if things were -- want to be changed, it should have been
8 changed. Any notice to the claimant prior to doing the
9 efforts would have done it. I'm not faulting anybody for
10 not doing it. There's a lot more important things quite
11 frankly going on in this case, namely selling all the
12 berries and all the things. And so I understand. I'm not
13 faulting anybody.

14 But I'm going to overrule the objection to the
15 claim. I think the claim is --

16 MR. CHATZ: Okay. Thank you, Your Honor.

17 THE COURT: -- well taken. Interesting. I must
18 admit it was an interesting case but I had already -- that
19 was my leaning in any way before, so -- but I think that
20 there was that implicit agreement, so that -- of all of
21 them, this was the most interesting reading through all of
22 this.

23 So anyway, it is -- it is what it is and so
24 there's -- not going to take anymore testimony. That's the
25 wonderful thing about doing this. The facts as I know are

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1 on the table and so that's what I'm going to do.

2 MR. CHATZ: I just wanted for clarification this
3 is being treated as an unsecured claim.

4 THE COURT: Oh, yeah.

5 MR. CHATZ: Thank you.

6 THE COURT: Well, yes, yes. It's -- yes.
7 Remember this is not -- he hasn't -- he's -- right. The
8 difference between selling berries and things and having a
9 PACA claim, yes, this is -- yeah, I guess you understand
10 that. That's obviously -- this is not a --

11 MR. SHEMANO: We understand that. We --

12 THE COURT: Yeah, this is a claim for its fees.
13 Right. It's not the -- it's not --

14 MR. SHEMANO: It's for a claim on the contract.

15 THE COURT: Right, right. On the contract, yes.

16 MR. CHATZ: All right. Thank you.

17 THE COURT: Yeah. Okay. I thought that was
18 obvious, but nothing is --

19 MR. CHATZ: I just want to make sure it's clear.

20 THE COURT: Yeah. No, no, he's not claiming any
21 security on the -- he does -- he has not provided
22 perishable goods. Yeah.

23 So anyway, so that's going to be -- if you'll
24 prepare that order --

25 MR. CHATZ: Yes.

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1 THE COURT: -- I've stated it on the record. I
2 don't think you need --

3 MR. CHATZ: We'll prepare the order, Your Honor.

4 MR. SHEMANO: We'll work on it together.

5 THE COURT: I think -- I mean, it isn't that I
6 don't trust you, but I -- you can work it out, but it's
7 very simple. You don't have to state -- oh, you can state
8 it on the record I've stated the reasons on the record --

9 MR. CHATZ: Right.

10 THE COURT: -- and the claim is allowed. Your
11 objection is overruled. That's a one-liner. I can do
12 it --

13 MR. CHATZ: No, I don't want you to have to do
14 that. There's a question, though, with respect to fees and
15 interest on this claim --

16 THE COURT: I wasn't even focusing on that. It
17 was just the amount of the claim.

18 MR. CHATZ: Right. And if it's just the amount
19 of the claim --

20 THE COURT: That's all I'm talking about. Wasn't
21 that --

22 MR. CHATZ: -- we're filing (indiscernible)
23 penalties and interest --

24 THE COURT: -- it?

25 MR. SHEMANO: No, there's a small portion of the

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1 claim amount that includes interest because the claim has
2 not been paid.

3 THE COURT: Right, right. And --

4 MR. SHEMANO: Well, not --

5 THE COURT: Prepetition interest.

6 THE COURT: Yeah, prepetition interest. Right.
7 That would be entitled.

8 MR. SHEMANO: And there's a claim for a few
9 thousand dollars of attorney's fees dealing with the claim
10 and that's --

11 THE COURT: Well, that -- that is a little bit --
12 I've forgotten about that. Since there's no contract I
13 don't see being entitled to attorney's fees.

14 MR. SHEMANO: Well, there is an argument under
15 PACA. I think what we'll do, Your Honor --

16 THE COURT: Well, I can tell you without -- I
17 would not allow the attorney's fees. The interest is what
18 it is and -- on the debt basically. I'll leave it at that.

19 MR. SHEMANO: Okay, Your Honor. We'll --

20 THE COURT: Because I'd rather -- I want to get
21 it done today.

22 MR. SHEMANO: Understood.

23 THE COURT: I don't want --

24 MR. SHEMANO: We'll solve this.

25 THE COURT: Okay.

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1 MR. CHATZ: Thank you, Your Honor.

2 THE COURT: Okay. Thank you very much.

3 MR. CHATZ: Okay. Back to claim #35.00, Your
4 Honor.

5 THE COURT: Okay.

6 MR. CHATZ: Two of the matters were resolved --
7 actually three now have been resolved: Gregorio Martinez,
8 BNSF and Vegetable Growers. As to the others we'd like to
9 submit a draft order disallowing all of them because
10 they've done --

11 THE COURT: All right. Right. Because I thought
12 we had already --

13 MR. CHATZ: -- respond --

14 THE COURT: -- the only one I had a question
15 about was the one -- the late filed claim --

16 MR. CHATZ: Right.

17 THE COURT: -- that yes, absolutely.

18 MR. CHATZ: Thank you. As to claim #36.00,
19 Travelers where they filed an unliquidated claim in
20 multiple -- in all three of the cases --

21 THE COURT: Right.

22 MR. SHEMANO: -- we're going to with Your Honor's
23 permission file a draft order disallowing all those claims.

24 THE COURT: All right. Yes.

25 MR. CHATZ: We've not received a response on that

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1 as well.

2 THE COURT: Okay.

3 MR. CHATZ: #37.00 there are -- these are the
4 duplicate claims of the California Department of Food &
5 Agriculture. We will allow the claim in the Eclipse case
6 and not in the other two cases.

7 THE COURT: All right.

8 MR. CHATZ: All right. And so we'll submit a
9 draft order on that. #38.00 which is Airgas, a portion of
10 that claim was paid by the purchaser. The balance should
11 be disallowed as the claimant has failed to mitigate by
12 refusing to pick up their product. The claimant is not
13 here and we'd ask that we can submit an order in that
14 regard.

15 THE COURT: Yes.

16 MR. CHATZ: And I think that's it.

17 THE COURT: Well, I'm glad you tied them all
18 together.

19 MR. CHATZ: Yes.

20 THE COURT: We were concerned with so many
21 things. Thank you very much. Anything else on this?

22 MR. CHATZ: Mr. Fritz, anything?

23 MR. FRITZ: No, Your Honor.

24 THE COURT: Now, let me ask you this. It's not
25 before me at the moment, so what's left in the case?

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1 MR. CHATZ: We have more claim objections --

2 THE COURT: Okay. Remember, it's always a
3 problem --

4 MR. CHATZ: -- coming up.

5 THE COURT: -- setting for calendar because we
6 just -- we don't know. We only have so much time and there
7 are other people, so what is -- what is --

8 MR. CHATZ: Right. We have a matter that's
9 #45.00, which is the APN matter. (Indiscernible) Nutrition
10 where we just had APN sign the settlement agreement today.

11 THE COURT: All right.

12 MR. CHATZ: We'd like to continue that. We have
13 another date on September 5th --

14 THE COURT: That's when you have other hearings
15 as well?

16 MR. CHATZ: -- for claims. Yes.

17 THE COURT: At what time?

18 MR. CHATZ: I believe it's 2:00 p.m. as well.

19 (Telephone dial tone sounds.)

20 THE COURT: Just had a new phone system hooked
21 in. We're still working it out. Trying to figure out how
22 to use my own phone.

23 MR. CHATZ: Right. So we have claim objections
24 on I believe the 5th and I believe it's the 21st. I could
25 be wrong with that date. And then we have confirmation on

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1 October 3rd. We'll probably ask you with the next date for
2 another date for claims resolution later in October.

3 THE COURT: Okay. So a portion of number --
4 which of the claim is on -- now, we're on #45.00?

5 MR. CHATZ: We're on #45.00. We'd like to put
6 over to September 5th.

7 THE COURT: Okay. All right.

8 MR. CHATZ: Okay. At 2:00 p.m.

9 THE COURT: Okay. Is that it?

10 MR. CHATZ: That's it.

11 THE COURT: Okay. Thank you.

12 MR. CHATZ: Thank you.

13 THE COURT: And again, thank you very much for
14 all your hard work and it's been a tough case, but so far
15 from my standpoint --

16 MR. CHATZ: We're --

17 THE COURT: -- everything considered it's a
18 successful case.

19 MR. CHATZ: Yes, and I'd like to thank Mr. Fritz.
20 They got us the letter, the plan and disclosure statement.
21 It went out today to creditors with the ballot, their
22 letter.

23 THE COURT: Great.

24 MR. CHATZ: So hopefully they'll be receiving
25 them and voting with alacrity. Hopefully we'll be here --

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1 THE COURT: And quickly as well.

2 MR. CHATZ: -- on October 3rd on the
3 confirmation.

4 THE COURT: Yes.

5 MR. CHATZ: Thank you.

6 THE COURT: Thank you very much.

7 (End at 3:14 p.m.)

8 * * * * *

9 I certify that the foregoing is a correct
10 transcript from the electronic sound recording of the
11 proceedings in the above-entitled matter.

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Date: 8/31/2018

15 RUTH ANN HAGER, C.E.T.**D-641

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